

REMARKS

I. INTRODUCTION

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

II. DISCLOSURE OF RELATED APPLICATION

Applicant wishes to bring to the Examiner's attention related application Ser. No. 09/961,400, filed September 25, 2001. Applicant believes the claims of this related application to be patentably distinct from the claims of the present application.

III. AMENDMENTS TO THE SPECIFICATION AND CLAIMS

Applicant appreciates the Examiner's indication that related application data needs to be updated. Accordingly, paragraph 0001 of the specification is amended to show that U.S. Pat. Appln. Ser. No. 09/071,672 is now U.S. Pat. No. 6,395,276.

After amending the claims as set forth above, claims 1 – 140 are now pending in this application. Claims 1 and 2 are amended to clarify that the recited antibody and moiety having ribonucleolytic activity are recombinantly linked to each other. Support for this amendment can be found in the specification, for example, at paragraph numbers 34 and 83 – 91. Claim 8 is amended in order to remove duplicate references to "IL-15."

Applicant submits that new claims 26 – 140 introduce no new matter. Support for the new claims can be found throughout the specification, particularly at the paragraph numbers identified in the following chart:

New Claim(s)	Exemplary Support in the Specification (paragraph Number(s))
26 – 30	54 – 59, 100
31, 32	60, 73
33, 34	33, 37
35	43, 44

36	43
37, 38	43, 44
39 – 42	59
43-46	97, 99
47 – 48	93
49 – 50	100
51 – 56	24, 54 – 59, 100
92 – 97	
57, 58	60
98, 99	
59 – 64	60, 73
100 – 109	
65, 66	8, 59, 93
110, 111	
112, 113	58, 59, 73
70, 78	70
114, 123	
68, 76	12
115, 124	
71 – 74	59, 60, 73
116 – 122	
77 – 80	43, 44
125 – 128	
81 – 83	24, 52, 93
129 – 132	
84 – 87	97, 99
133 – 136	
88 – 91	100
137 – 140	

For the Examiner's convenience, Applicants point out that claims 1 – 140 are organized to cover subject matter along three lines. Claims 1 – 50, as noted above, are limited to cytotoxic reagents wherein the antibody and moiety having ribonucleolytic activity are linked to each other through recombinant production. Claims 51 – 91 are limited only to the extent that the recited antibody is directed against an antigen that is not a B-cell antigen. Finally, claims 92 – 140 are limited inasmuch as the recited antibody is human or humanized.

IV. THE OFFICE ACTION

The sole substantive issue in the Office Action is an obviousness-type double patenting rejection of claims 1 – 25. Office Action, pages 2-3 (items 3 and 4). Specifically, the Examiner alleged the present claims to be patentably indistinct from those of commonly assigned U.S. Pat. Nos. 6,083,477 and 6,395,276. Insofar as this rejection might apply to the claims as amended and submitted anew, Applicant respectfully traverses this rejection.

A. U.S. Pat. No. 6,083,477 ("the '477 patent")

The '477 patent claims are directed to a conjugate of a non-immunogenic RNase (or therapeutic radionuclide) and a cell-specific cytokine (claims 1 – 6). Additionally, claims 7 – 14 recite a fusion protein comprising a bispecific antibody. Finally, claims 15 and 16 are directed to a kit comprising the conjugate and fusion protein.

By contrast, the present claims recite, *inter alia*, a cytotoxic reagent comprising an antibody and a moiety having ribonucleolytic activity. Antibodies simply are not cytokines, and manifestly are completely different. Consequently, the present claims, by virtue of reciting antibodies conjugated to a moiety having ribonucleolytic activity, are not obvious in view of the '477 patent claims, which are directed to cytokine-RNase conjugates.

Turning to claims 7 – 14 of the '477 patent, the person of ordinary skill in the art would not consider the presently claimed cytotoxic reagent obvious because the claims of the '477 patent do not recite the present moiety having ribonucleolytic activity. Because the '477 patent claims lack this feature, they cannot render obvious

the presently claimed invention. Finally, the kit of claims 15 and 16 do not suggest the instantly claimed cytotoxic reagent for the same reasons.

The '477 patent claims lack the antibody and the moiety having ribonucleolytic activity as claimed here. Thus, the two sets of claims are patentably distinct from each other because there is no obviousness. Therefore, Applicant submits there to be no obviousness-type double-patenting issue and respectfully requests the Examiner to reconsider and withdraw this rejection.

B. U.S. Pat. No. 6,395,276 ("the '276 patent")

The '276 patent claims are directed to a method of killing malignant B cells with a cytotoxic reagent comprising an antibody, which is directed against B cell markers, covalently linked to an onc protein having ribonucleolytic activity. In the Examiner's opinion, the presently claimed method is the same as that claimed in the '276 patent.

Present claims 1 – 50 require the recited antibody and moiety having ribonucleolytic activity to be joined to each other through recombinant production. By contrast, the '276 patent claims are limited instead to a covalent (i.e., chemical) linkage. Recombinant and chemical linkages are distinct from each other, requiring different means to effect them, which result in different structures. Consequently, the claimed recombinant linkage cannot be considered to be an obvious variant of the covalent linkage claimed in the '276 patent.

Claims 51 – 91 require the recited antibody to be active against non-B cell antigens. As mentioned above, however, the '276 patent claims are limited with respect to antibodies being directed against only B cell surface markers. The absence of B cell antigen activity clearly is not an obvious variant over the presence of B cell antigen activity. Because the claims of the '276 patent encompass subject matter wholly distinct from that of present claims 92 – 140, no question of obviousness arises.

Finally, claims 92 – 140 specify that the recited antibody is human or humanized. By contrast, the '276 patent claims are not so limited, but rather read on an antibody of any origin. In light of the general recitation of an antibody, it would not

have been obvious to a person of ordinary skill in the art to select only human or humanized antibodies as presently claimed. Consequently, Applicant submits that the '276 patent claims do not render obvious instant claims 92 – 140.

Because each of present claims 1 – 140 recites features that are neither claimed in nor rendered obvious by the '276 patent claims, Applicant submits that this rejection is moot. Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection.

V. **CONCLUSION**

Applicant courteously requests favorable reconsideration of the application as amended. There being no other outstanding issues, Applicant believes this application to be in condition for allowance and earnestly seeks an early notice to that effect.

If the Examiner feels that a telephone interview would advance the prosecution of the present application, the Examiner is invited to contact the undersigned by telephone.

Respectfully submitted,

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The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.